v. Kent[4], where the plaintiff was employed in a different department and on altogether dissimilar work from the workmen whose negligence had caused his injuries, and it was held that the doctrine of common employment did not apply. Fourthly, it would appear from the decision in *Alan France v. "Polartank"*[5] that it is at least doubtful if the doctrine of common employment has ever applied except in cases where the plaintiff is a servant of the defendant in the sense that the latter is in a position to tell him the manner in which he is to perform his duties, which I cannot think was the case here. Therefore I hold that, assuming the plaintiff can be regarded as the servant of the defendants, the doctrine of common employment cannot apply so as to relieve the defendants of their liability for the negligence of their servants.

It is therefore unnecessary, for the purpose of a decision in this case, to determine the question of whether the plaintiff was a servant. But as the point has been raised it may be useful to consider it and express my view. In *Thom v. Hutchinson Ltd.*[2] and *Kelley v. Shamrock Shipping Co.*[3] it appears to have been considered that the pilot was the servant of the ship-owners and engaged in common employment with the ship's crew. But in the Lloyd's List report of the latter case, the facts which are material to this question are not set out. In the present case the plaintiff is a member of the Singapore Pilot Association. If that makes him a servant of the Association, the case would seem to fall directly within the ambit of *Alan France v. "Polartank"*[5]. But I do not think he is a servant of the Association. I think that the Singapore Pilot Association is an association of individuals, who are in the position of independent contractors. By their Articles they agree to subject themselves to certain common rules, for their mutual benefit, and to pay their individual earnings into a common pool. Upon the question of whether a pilot, in his relations with the ship-owner, is in the position of a servant or an independent contractor, the degree of control which the Master, as the ship-owner's agent, has over the pilot's work must be the decisive factor. It appears to me that the service which a pilot contracts to undertake is to take control of the navigation of the ship. He gives his orders to the Master. I cannot see that the Master, has any more control over a pilot than a patient has over his doctor or a client over his solicitor. A pilot may be the servant of a third party, e.g. a Harbour Board, as I suspect was the case in the two authorities cited; but that is not the case here. But unless a shipping company maintains a pilot on its salaried staff (I do not know if there are such cases) I find it difficult to understand, having regard to the nature of a pilot's duties, how a ship-owner and a pilot can be in the relationship of master and servant unless that relationship is created by reason of the pilot's relations with a third party.

I hold that the plaintiff is entitled to damages, which remain to be assessed.

Judgment for the plaintiff.

TAN KIM CHANG v. REGINA

[A. Cr. J. (Whitton, J.) July 29, 1953]

[Singapore — Magistrate's Appeal No. 65 of 1953]

Road traffic — Negligent driving — Singapore Traction Ordinance (Cap. 109), s. 58 — Degree of negligence required — Test to be applied.

The appellant was driving a bus in the centre traffic lane and was overtaking a trishaw which was in the nearside lane. At the same time another bus on the offside lane began to overtake the appellant's bus, and the appellant swerved slightly to the left and in so doing he hit the trishaw.

Applying the test laid down by Goddard L.C.J. in **Simpson** v. **Peat** (1), the learned Magistrate found that the appellant was not exercising the degree of care and attention that a reasonable and prudent driver would exercise in the circumstances, and accordingly convicted him.

Held: although it is correct to apply the test laid down in **Simpson** v. **Peat** (1), the negligence should also amount to a crime against the State and to conduct deserving punishment.

To constitute the offence of driving negligently under section 25(2) of the Road Traffic Ordinance and section 58 of the Singapore Traction Ordinance, it is not necessary to establish any degree of negligence, but the Court should be satisfied there was negligence which merited punishment.

In this case, although the appellant was not exercising the degree of care which a prudent driver would exercise in the circumstances, his conduct was not such as to deserve punishment.

[**Editorial Note:— In Kuah Koon Teng v. Regina** (Singapore Magistrate's Appeal No. 243 of 1952 unreported) which was an appeal against a conviction for negligent driving the appellant had cut in front of another bus to avoid an oncoming car. There was insufficient evidence of racing. **Brown, J.** held that the degree of negligence required for an offence under section 58 of the Singapore Traction Ordinance is not the same as for an offence under the Penal Code. This section however is a penal section, and the degree of negligence must be such that it is deserving of punishment. Although the appellant was at fault in cutting in, his act of cutting in did not amount to such a degree of negligence as to deserve punishment.]

Cases referred to:—

(1) *Simpson v. Peat* (1952) 1 All E.R. 447.

(2) *Chow Koek v. Public Prosecutor* (1940) M.L.J. 103.

(3) *R. v. Bateman* (1925) 94 L.J.K.B. 791.

MAGISTRATE'S APPEAL. 19 Cr. App. R. 8.

J. D. Donelly for the appellant.

T. Mahony (Crown Counsel) for the respondent.

Whitton, J. : —In this case the appellant, Tan Kim Chang, a Singapore Traction Company bus driver, was convicted on the following charge :—

"That you at about 1.00 p.m. on 18.9.52 at Kallang Road near the Soon Hing Foundry, did drive S.T.C. omnibus No. 112 negligently resulting in a collision with trishaw No. SMC 4701 and you have thereby committed an offence under section 58 Cap. 109".

A fine of $75 was imposed.

The facts are set out by the learned Magistrate as follows :—

"At 12.30 p.m. on 18th September, 1952 the accused was driving an S.T.C. bus No. 112 along Kallang Road in the direction of Geylang. It should be explained that traffic along this stretch of Kallang Road from Lavender Street to Mountbatten Road is normally channelled into three traffic lanes. The nearside lane is for trishaws and cycles, while the middle and offside lanes are for motor vehicles. The accused that day was driving his bus from the Lavender Street junction in the centre lane of traffic. A little beyond the junction another S.T.C. bus in the offside lane began to overtake the accused's bus. As these two buses approached the Soon Hing Foundry (situated before Kallang Bridge), a trishaw was ahead of them in the nearside traffic lane going in the same direction. The accused in bus No. 112 began to pass the trishaw. At the same time the S.T.C. bus in the offside lane drew level with bus No. 112. When bus No. 112 had got past the trishaw by about a third of its length there was a collision with the trishaw. The trishaw rider was knocked off his seat and had to be removed to hospital. The trishaw was damaged. Two occupants of the trishaw were unhurt. When the bus stopped after the collision its nearside wheels were seen to be within the nearside traffic lane (i.e. the one being used by the trishaw) by about six inches."

The Magistrate then went on to summarise the evidence of the appellant in the following terms :—

"The accused in his defence stated that he first saw the trishaw 50 to 60 feet in front of him. It was in the nearside lane. He noticed the rider was veering towards the centre lane i.e. the lane he was in. Despite this he decided to overtake the trishaw, and cleared it by about 18 inches. However he found he was dangerously close to the bus overtaking him in the offside lane, so he swerved slightly to his left. In doing so he hit the trishaw."

As the Magistrate expresses no doubt about the appellant's testimony I assume he accepted it, and indeed I see no reason to question its truth.

To these facts in determining whether the charge had been proved the Magistrate applied the test laid down by Goddard L.C.J. in *Simpson v. Peat*[1]. That test in the words of Lord Goddard is "Was the defendant exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances?" The charge was one under section 12 of the Road Traffic Act 1930, the marginal note of which is "careless driving". A first offence under the section is not punishable with imprisonment, although (since an amendment made by the Road Traffic Act 1934) disqualification from holding a licence may be ordered to the extent of one month in the case of a first conviction and of three months in the case of a second. It would seem then that section 12 was invented to deal with cases where there is no very serious lapse from the requisite standard of care and attention. In *Simpson v. Peat*[1] the facts on which it was held the justices ought to have convicted were that while driving at a reasonable speed along a road a driver turning into a side turning on his right collided with a motor cycle coming in the opposite direction. In the present case the learned Magistrate was apparently of the opinion that proof of what he calls "ordinary negligence," that is negligence falling short of the high degree of negligence necessary to constitute a Penal Code offence as laid down in *Chow Keok v. Public Prosecutor*[2], is sufficient to establish the offence of driving negligently under section 25(2) of the Road Traffic Ordinance (No. 17 of 1941) or the offence under the Singapore Traction Ordinance with which the appellant was charged. He also considered that section 12(1) of the Road Traffic Act 1930 is the counterpart of section 25(2) of the Road Traffic Ordinance.

In my view the Magistrate was right in applying the test laid down in *Simpson v. Peat*[1]. It is, I think, the criterion to be applied in all traffic charges where negligence, expressly or impliedly, is alleged. But I do not think it is sufficient to be satisfied merely that there was what the Magistrate describes as "ordinary negligence" before holding an offence under section 25(2) has been committed. The Court has to be satisfied as to something more, as I see the matter, before convicting on such a charge. That "something more" is that the negligence in question amounted to a crime against the State and to conduct deserving punishment, and went beyond a mere matter of compensation between subjects. This definition of criminal negligence was laid down in *R. v. Bateman*[3], which was a manslaughter case and also not a traffic case, but nevertheless the definition is applicable, in my opinion, to all prosecutions where negligence is alleged (*vide Halsbury* 2nd Ed. Vol. 23 p. 655). On the other hand it is also clear that to constitute certain traffic offences involving negligence —there is a perhaps natural though not altogether logical reluctance to describe traffic offences as crimes — a comparatively small degree of negligence will suffice, as *Simpson v. Peat*[1] shows. I am not sure that the Magistrate is right in stating that section 12(1) of the Road Traffic Act 1930 is the counterpart of section 25(2) of our Ordinance, but in any event I think it would be a mistake to attempt to lay down limits to the scope of section 25. I would content myself by saying that to constitute the offence of driving negligently under section 25(2) it is not, in my opinion, necessary to establish any particular degree of negligence, but the Court should be satisfied there was negligence which merited punishment as constituting an offence against the State before holding the

charge proved. The same observations applied, I think, to a charge under section 58 of the Road Traffic Ordinance.

In the present case the learned Magistrate was of the opinion that the appellant in passing the trishaw with so little room to spare, while at the same time another vehicle was dangerously close to him on his right, was not exercising the degree of a care which a prudent driver would exercise in the circumstances. In this connection I think there is no reason to hold there was negligence on the part of the trishaw puller, even if he did veer outwards, as there is no suggestion he crossed or attempted to cross the border of the lane in which he was travelling. It is also obvious that the right course for the appellant would have been to pull up, though it is only fair to qualify this remark by saying that it does not appear to be clear from the evidence whether the appellant had already commenced to overtake the trishaw when he first became aware the second omnibus was proceeding to overtake him. But even if he was aware of this is his failure to follow the prudent course in a moment of crisis suddenly thrust upon him by the second omnibus to be regarded as conduct deserving of punishment? I consider it is an unjustfiably severe view of the appellant's lapse to hold that it amounted to criminal negligence. In conclusion since *Simpson v. Peat*[1] has been cited in connection with this appeal I would mention the negligence of the defendant in that case to my mind was plainly more culpable than that of the present appellant. There is a well recognised obligation on a driver not to turn right in front of oncoming traffic unless he can do so without risk. Putting the matter briefly it is up to him to see that he can turn right in such circumstances without causing danger. In attempting to pass the trishaw, on the other hand, the present appellant was not disregarding any established rule of the road.

For these reasons I would allow this appeal. The conviction and sentence are set aside.

Appeal allowed.

NOOR MOHAMED YOUSOFF
v.
TEO KAI TEE & ANOR.

[O. C. J. (Murray-Aynsley, C.J.) September 10, 1953]

[Singapore — Suit No. 776 of 1952]

Limitation Ordinance — Effect of amendment on right of action already barred — Interpretation and General Clauses Ordinance, 1951, s. 14 — Retrospective operation of statutes — Amendment not a repeal.

The plaintiff's claim is for damages for injury caused by the negligence of the 2nd defendant as a servant or agent of the 1st defendant in a motor accident which occurred on 9th February 1952. Originally the writ of summons was taken out against the 1st defendant only but subsequently on 10th April 1953 the 2nd defendant was joined as a defendant.

By an amendment to the Limitation Ordinance on 17th March 1953 the period of limitation for compensation for injury to the person was extended from one to three years (Ordinance No. 9 of 1953).

In an issue tried that the plaintiff's right of action against the 2nd defendant was barred by the Limitation Ordinance as it was in force on the 10th February 1953,—

Held: in order to bring section 14 of the Interpretation and General Clauses Ordinance, 1951 into operation there must be a repeal. A mere amendment cannot be treated as a partial repeal.

ACTION FOR DAMAGES.

Syed Esa Almenoar for the plaintiff.

George J. Okell for the defendant.

Murray-Aynsley, C.J. : — This issue raised a short point of law.

The cause of action arose on February 9, 1952. Proceedings as against the 2nd defendant were begun on April 10, 1953. Previous to February 22, 1953 the period of limitation for this claim would have been one year. By an amendment to the Limitation Ordinance on the latter date the period of limitation was extended to 3 years. Therefore, from February 10, 1953 until March 22, 1953 if proceedings had been taken the 2nd defendant could have successfully raised a plea of limitation. The question before me is as to the effect of this amendment to the Limitation Ordinance.

If this were to be applied literally the relevant period would be governed by the state of the law at the time when proceedings were begun. I do not think that in these days, unless there is ambiguity, it is possible to rely on any supposed presumption against retrospective operation of statutes or on any difference between the effect of legislation on substantive and adjectival law. The prevailing mode is in favour of extremely literal interpretation of statutes. In view of the great care with which statutes are now drafted, which contrasts very much with the way statutes have been drafted in the past, it appears to me that this is the only attitude that Courts can adopt. In view of this I think the plaintiff is entitled to succeed unless the Interpretation Ordinance (No. 4 of 1951) affects the situation. Section 14 was relied on by counsel for the 2nd defendant. It is possible that the words of this section cover the situation of the 2nd defendant after February 9, 1953, but in order to bring the section into operation there must be a repeal. I cannot find a case in which a mere amendment has been treated as a partial repeal — so as to bring into play the corresponding English section.

In the circumstances I must find for the plaintiff on the motion. Plaintiff's costs in any event.

Judgment for the plaintiff.